

**FEDERAL ELECTION COMMISSION**  
**999 E Street, N.W.**  
**Washington, D.C. 20463**

**FIRST GENERAL COUNSEL'S REPORT**

**MUR: 6099**

**DATE COMPLAINT FILED: October 20, 2008**

**DATE OF NOTIFICATION: October 27, 2008**

**LAST RESPONSE RECEIVED: December 11, 2008**

**DATE ACTIVATED: January 27, 2009**

**EXPIRATION OF STATUTE OF  
LIMITATIONS: October 4, 2013**

**COMPLAINANT:**

**Todd P. Graves**

**RESPONDENTS:**

**Page for Missouri and Barbara  
Hoffman, in her official capacity as  
treasurer  
Waverley Glen Systems Ltd.  
Sam Page**

**RELEVANT STATUTES  
AND REGULATIONS:**

**2 U.S.C. § 441e  
11 C.F.R. § 110.20**

**INTERNAL REPORTS CHECKED:**

**None**

**FEDERAL AGENCIES CHECKED:**

**None**

**I INTRODUCTION**

The complaint in this matter alleges that Missouri State Representative Sam Page and his state political committee, Page for Missouri and Barbara Hoffman, in her official capacity as treasurer ("Committee"), knowingly and willfully accepted a prohibited \$10,000 campaign contribution for his campaign from a foreign corporation, Waverley Glen Systems Ltd. ("Waverley Glen"), a Canadian company wholly-owned by Prism Medical Ltd., another Canadian corporation. As discussed below, the available information indicates that another wholly-owned subsidiary of Prism Medical, Ergosafe Products LLC ("Ergosafe"), a domestic

1 corporation, made the contribution. As the Commission's regulations allow domestic  
2 subsidiaries of foreign contributions to make contributions if they meet certain criteria, and it  
3 appears that Ergosafe has satisfied those requirements, we recommend that the Commission find  
4 no reason to believe that Waverley Glen violated 2 U.S.C. § 441e. It follows that since neither  
5 Sam Page nor his political committee accepted an impermissible foreign contribution, we further  
6 recommend that the Commission make no reason to believe findings as to these respondents, and  
7 close the file in this matter.

8 **II. FACTS**

9 Prism Medical Ltd. ("Prism Group") is a foreign corporation based in Canada that  
10 focuses on the manufacture, distribution, sale, and installation of lift, transfer and handling  
11 devices. One of its subsidiaries is Waverley Glen, a foreign corporation likewise based in  
12 Canada. Ergosafe, while also a wholly-owned subsidiary of the Prism Group, is a domestic  
13 corporation unlike Waverley Glen. Specifically, Ergosafe is a Delaware corporation registered  
14 to conduct business in Missouri. Charley Wallace, a U.S. citizen, is the President of both  
15 Waverley Glen and Ergosafe, and is the Chief Operating Officer of the Prism Group.

16 Since 2003, Dr. Sam Page has served in the Missouri House of Representatives. While  
17 still holding that office, on June 5, 2007, Dr. Page announced his candidacy for the Democratic  
18 nomination for the office of Lieutenant Governor of Missouri. Page's state political committee,  
19 Page for Missouri, which registers and files reports with the state of Missouri, accepted  
20 contributions for this campaign.

21 On August 28, 2008, a Missouri state law came into effect effectively repealing political  
22 contribution limits. Tony Messenger, *Big Money gives Jolt to Missouri Governor's Race*, St.  
23 Louis Post-Dispatch, September 3, 2008. Thereafter, in its state disclosure reports, the

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1 Committee reported receipt of a \$10,000 contribution on October 4, 2008 from "Waverly Glenn  
2 [sic]." According to the complaint and accompanying documents, the Committee received this  
3 contribution via corporate check dated September 25, 2008. The check was drawn on the bank  
4 account of "Waverley Glen, a Prism Medical Company," and is made payable to "Page for  
5 Missouri." The photocopied check also contains two signatures from Waverley Glen  
6 personnel—neither of whom is Charley Wallace—and was mailed in an envelope containing the  
7 Waverley Glen logo and the following address: 87 Sharer Road, Vaughan, Ontario, Canada. On  
8 October 17, 2008, the Committee amended its prior disclosure of the contribution in question,  
9 replacing the Vaughan Ontario address with a St. Louis, Missouri address, but leaving the  
10 contributor as Waverley Glen.

11 The complaint maintains that Waverley Glen, the foreign corporation, made the  
12 contribution, noting that Waverley Glen personnel not only signed the check, but also mailed the  
13 check from Waverley Glen's address in Canada to the Committee. The complaint also states that  
14 the Committee's subsequent amendment of the contribution to reflect a U.S. address instead of  
15 the Canadian address, suggests not only that a foreign contribution had been made and accepted,  
16 but that the Committee was attempting to conceal it.

17 In its response, the Committee maintains that the contribution was not made by a foreign  
18 national, but rather by Ergosafe, a U.S. subsidiary of a foreign corporation "styled in the brand  
19 name of 'Waverley Glen, A Prism Medical Company.'" Committee Response at 1. The  
20 Committee states that Ergosafe is not a foreign national, as it is a Delaware Corporation that  
21 operates in Missouri. Additionally, the Committee stated that it had previously received an  
22 individual contribution from Charley Wallace, was aware that he was the President of Ergosafe  
23 and other Prism Group subsidiaries, and knew, from Wallace's personal contribution to the

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1 campaign, that the check from Waverley Glen, A Prism Medical Company, was not from a  
2 foreign national. *Id.* at 2. Accordingly, the Committee concludes that it did not knowingly  
3 accept a contribution from a foreign national. *Id.* at 3.

4 Waverley Glen's response to the complaint also states that the disputed contribution was  
5 made by a domestic company, noting that "'Waverley Glen, A Prism Medical Company' is  
6 merely a trade name utilized by all Prism Group companies" and that neither Waverley Glen nor  
7 its parent company, Prism Medical Ltd., actually authorized or funded the contribution to the  
8 Committee. Waverley Glen Response at 2. Rather, Waverley Glen states that Ergosafe made the  
9 contribution at the direction of its President Charley Wallace, and the contribution was drawn  
10 from Ergosafe's domestic bank account with HSBC Bank USA. It further states that since Mr.  
11 Wallace was not in Ergosafe's Missouri office when he authorized payment of the contribution,  
12 he was unable to physically sign the contribution check. *Id.* at 4. Therefore, Mr. Wallace

13 contacted the corporate headquarters of Ergosafe's parent in Canada  
14 and directed a check to be issued on Ergosafe's behalf. At the Canadian  
15 office, eight individuals have authorization to issue checks from the Prism  
16 Group's accounts located in the United States, including Ergosafe's HSBC  
17 account. Both signatories in this instance were among those individuals.  
18 Ergosafe's parent merely signed and mailed a check for a contribution  
19 previously authorized by Ergosafe.  
20

21 *Id.* at 4-5. Waverley Glen also attached a letter from HSBC bank dated November 7, 2008,  
22 confirming that Ergosafe maintains an account with that bank. See Waverley Glen Response,  
23 Exhibit I.

### 24 III. LEGAL ANALYSIS

25 The Act defines "contribution" as anything of value made by any person for the purpose  
26 of influencing any election for Federal office. 2 U.S.C. § 431(8)(A)(i). It is unlawful for a  
27 foreign national, directly or indirectly, to make a contribution or donation of money or other

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1 thing of value, or make an expenditure in connection with a federal, state, or local election.  
2 2 U.S.C. § 441e(a)(1)(A); 11 C.F.R. § 110.20(b). A "foreign national" is an individual who is  
3 not a citizen of the United States or a national of the United States and who is not lawfully  
4 admitted for permanent residence. 2 U.S.C. § 441e(b)(2). The term also encompasses "a  
5 partnership, association, corporation, organization, or other combination of persons organized  
6 under the laws of or having its principal place of business in a foreign country." 2 U.S.C.  
7 § 441e(b)(1) (citing 22 U.S.C. § 611(b)(3)).

8 Commission regulations implementing 2 U.S.C. § 441e prohibit foreign nationals from  
9 directing, dictating, controlling, or directly or indirectly participating in the decision-making  
10 process of any person, including a corporation, with regard to that person's federal or nonfederal  
11 election-related activities, such as decisions relating to making contributions, expenditures or  
12 disbursements in connection with elections for any local, state, or federal office or decisions  
13 concerning the administration of a political committee. 11 C.F.R. § 110.20(i).

14 In addressing the issue of whether a domestic subsidiary of a foreign national, like  
15 Ergosafe, may make contributions in connection with local, state or federal campaigns for  
16 political office, the Commission has looked to two factors when giving advice to requestors: the  
17 source of the funds used to make the contributions and the nationality status of the decision  
18 makers. See Advisory Opinion 2006-15 (TransCanada). Regarding the source of funds used to  
19 make contributions in connection with local, state or federal elections, a domestic corporation is  
20 not permitted to make such contributions when the source of funds is a foreign national, because  
21 this essentially permits the foreign national to make contributions indirectly when it could not do  
22 so directly. See Advisory Opinion 1989-20 (Kuilima) Because Asahi Japan, the foreign parent

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1 company, is Kuilima's predominant source of funds, it would essentially be making a  
2 contribution to the committee through Kuilima).

3 Even if the funds used for political contributions by a domestic company with foreign  
4 ownership are generated domestically, the Commission has also considered the nationality status  
5 of the decision makers to determine the legality of the contributions. The Commission has  
6 conditioned its approval of contributions by domestic subsidiaries of foreign nationals by  
7 requiring that no director or officer of the subsidiary or its parent, or any other person who is a  
8 foreign national, participate in any way in the decision-making process regarding the  
9 contributions. 11 C.F.R. § 110.20(i); See Advisory Opinion 1985-3 (Diridon)(No person who is  
10 a foreign national under 2 U.S.C. § 441e can have any decision-making role or control with  
11 respect to any political contribution made by UTDC, Inc.). Thus, the Act prohibits contributions  
12 from foreign nationals, as well as contributions from domestic companies where either the funds  
13 originate from a foreign national source or a foreign national is involved in decisions concerning  
14 the making of the contribution. 2 U.S.C. § 441e; 11 C.F.R. §§ 110.20(b) and (i).

15 Waverley Glen's original response did not address whether Ergosafe had sufficient U.S.  
16 derived funds in its bank account, *i.e.*, funds not given or loaned by Waverley Glen, Prism  
17 Medical Ltd., or any other foreign national, to make the \$10,000 contribution to Sam Page's  
18 campaign. Nor did it explicitly state that no non-U.S. citizens, directly or indirectly, participated  
19 in the decision to make the contribution. We therefore invited Waverley Glen to voluntarily  
20 supplement its response, which it did.

21 Waverley Glen explicitly stated in its supplemental response that "Ergosafe's significant  
22 U.S. domestic operations were more than sufficient to fund the small amount at issue here,  
23 without any assistance or consideration whatsoever from its Canadian parent companies," and

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1 "[t]he contribution was paid for by funds derived solely from Ergosafe's revenues generated by  
2 sales made to U.S. customers." Waverley Glen Supplemental Response at 3 (emphasis in the  
3 original). Respondent provided an HSBC bank statement showing that Ergosafe had maintained  
4 an account balance ranging from \$236,000 to \$568,000 during the month in which the \$10,000  
5 contribution was drawn from its checking account, with nearly \$400,000 in payments from a  
6 single U.S. customer, Veterans Medical Equipment Sales, LLC. *Id.* See also Supplemental  
7 Response, Exhibits C and D. The bank statement also confirms that the \$10,000 contribution  
8 was drawn from the HSBC account, as check no. 1013, which matches the check number on the  
9 photocopied contribution check and is listed among the items paid on the account, with the same  
10 \$10,000 amount. *Id.*

11 Waverley Glen also explicitly stated in its supplemental response that "Charley Wallace,  
12 a U.S. citizen and President of Ergosafe, was the sole person involved in deciding to make this  
13 contribution and thereafter executing the contribution (emphasis in the original)." Waverley  
14 Glen Supplemental Response at 2. Further, Waverley Glen provided a supplemental affidavit  
15 from Charley Wallace, stating that he had the authority to make the contribution to the  
16 Committee without the foreign parent's approval, and that "[n]o foreign parent company or any  
17 foreign company whatsoever directed, dictated, controlled or directly or indirectly participated in  
18 the decision-making process regarding the making of the donation at issue." Supplemental  
19 Response, Exhibit D at Paragraph 9.

20 Since Waverley Glen's supplemental response shows that Ergosafe's contribution  
21 appears to satisfy the criteria for domestic subsidiaries of foreign nationals, a foreign  
22 contribution did not occur. Therefore, we recommend that the Commission find no reason to  
23 believe that Waverley Glen Systems Ltd. violated 2 U.S.C. § 441e by making an impermissible

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foreign contribution. We further recommend that the Commission find no reason to believe that Sam Page and Page for Missouri and Barbara Hoffman, in her official capacity as treasurer, violated 2 U.S.C. § 441e by accepting an impermissible foreign contribution. Finally, we recommend that the Commission close the file.

**IV. RECOMMENDATIONS**

1. Find no reason to believe that Waverley Glen Systems Ltd. violated 2 U.S.C. § 441e.
2. Find no reason to believe that Sam Page violated 2 U.S.C. § 441e.
3. Find no reason to believe that Page of Missouri, and Barbara Hoffman, in her official capacity as treasurer, violated 2 U.S.C. § 441e.
4. Approve the attached Factual and Legal Analyses.
5. Approve the appropriate letters.
6. Close the file.

Thomasenia P. Duncan  
General Counsel

4/27/09  
Date

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